

Rejection under 35 U.S.C. § 102(b)

Applicants respectfully traverse the rejection of claim 85 under 35 U.S.C. § 102(b) as anticipated by Wollrath et al.

To properly establish that Wollrath et al. anticipates claim 85 under 35 U.S.C. § 102(b), each and every element of the claim must be found, either expressly described or under principles of inherency, in that single reference. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See M.P.E.P. §2131, 8th Ed., Aug. 2001, p. 2100-69, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Finally, "[t]he elements must be arranged as required by the claim." M.P.E.P. §2131, p. 2100-69. Wollrath et al. does not teach each and every element of claim 85.

Applicants' claim 85 recites a computer-implemented method comprising, among other things, "if it is determined that a first object group is not active, creating the first object group and activating a first object within the created first object group, wherein the first object group is a first subset of all objects that can be remotely activated."

In contrast, Wollrath et al. discloses an activation protocol for distributed object systems. More specifically, Wollrath et al. describes three activation models - eager activation (a strategy that maintains as an invariant that each reference within an active object also refers to an active object); lazy activation (defers activation of an object to the time at which an operation is invoked on that object); and split activation (combines aspects of both eager and lazy activation).

Wollrath et al. further discloses aggregate objects, which have an identity spanning multiple objects but which function as a single cohesive unit. In particular, all

objects which share the unique identifier are considered part of the same aggregate object and if the aggregate for a particular object identifier is "activatable," then all objects which make up the aggregate are activated. Contrary to the Examiner's assertions, Wollrath et al. does not teach a method including at least creating a first object group and activating a first object within the created first object group when it is determined that a first object group is not active, wherein the first object group is a first subset of all objects that can be remotely activated, as recited in claim 85. Instead, Wollrath et al. teaches the notion of an aggregate object in which all the objects in the aggregate function as a single cohesive unit.

Because Wollrath et al. fails to disclose each and every element of independent claim 85, Applicants respectfully request that the rejection of the claim be withdrawn and the claim allowed.

Rejection under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims 88, 70-84, 86, 87, and 89-102 under 35 U.S.C. § 103(a) because the Examiner has failed to establish a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim elements. Furthermore, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." See M.P.E.P. § 2143.01 (8th Ed., Aug. 2001), quoting *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art, to modify a reference or to combine reference teachings. Finally, there must be a reasonable expectation of success. See M.P.E.P. § 2143 (8th Ed. 2001), pp. 2100-122 to 127.

Claim 88

The Examiner asserts that Wollrath et al. teaches substantially the recitations of claim 88, however, the Examiner admits that Wollrath et al. fails to teach a second object call, second object, second group, and a second subset, as recited in claim 88.

In an attempt to address these shortcomings, the Examiner asserts "it would have been obvious to perform the steps as recited in claim 85 for the invocation of a second object belonging to a second group/set for the purpose of uniformity." Office Action at page 3. Applicants respectfully disagree with the Examiner's assertions and conclusions. Applicants respectfully point out that the steps recited in claim 88 are not a mere duplication of the steps recited in claim 85. Instead, claim 88 recites "creating the second object group ... wherein the second object group is a second subset, *different from the first subset*, of all objects that can be remotely activated" (emphasis added).

Further, Wollrath et al. does not teach or suggest if it is determined that a second object group is not active, creating the second object group and activating a second object within the created second object group, wherein the second object group is a second subset, different from the first subset, of all objects that can be remotely activated, as recited in claim 88. Instead, Wollrath et al. merely discloses the notion of aggregate objects and nowhere does it teach or suggest a second object group is a second subset, different from the first subset, of all objects that can be remotely activated, as recited in claim 88.

Also, Applicants disagree with the Examiner's assertion that Wollrath et al. inherently provides multiple groups/sets of objects. It appears that the Examiner has taken Official Notice that the recitations of claim 88 are inherent and well known in the art. Accordingly, Applicants refer the Examiner to the February 21, 2002 Memorandum from USPTO Deputy Commissioner for Patent Examination Policy, Stephen G. Kunin, regarding "Procedures for Relying on Facts Which are Not of Record as Common Knowledge or for Taking Official Notice." In relevant part, the Memorandum states, "If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding" (Memorandum, p. 3). Further, the Memorandum indicates that the Federal Circuit has "criticized the USPTO's reliance on 'basic knowledge' or 'common sense' to support an obviousness rejection, where there was no evidentiary support in the record for such a finding." Id. at 1.

Applicants submit that "[d]eficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic knowledge' or 'common sense.'" In re Lee, 61 USPQ2d 1430, 1432-1433 (Fed. Cir. 2002), quoting In re Zurko, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Should the Examiner maintain the rejection after considering the arguments presented herein, Applicants submit that the Examiner must provide "the explicit basis on which the examiner regards the matter as subject to official notice and [allow Applicants] to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made" (Id. at 3, emphasis in original), or else withdraw the rejection.

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Because Wollrath et al. does not teach or suggest each and every element of claim 88, Applicants respectfully request that the rejection of this claim under 35 U.S.C. § 103(a) be withdrawn and the claim allowed. Further, Claim 88 depends from independent claim 85. As explained above, claim 85 is distinguishable from Wollrath et al. Accordingly, claim 88 is also distinguishable from Wollrath et al. for at least the same reasons set forth for claim 85.

Claims 70-84, 86, 87, and 89-102

In the Office Action, the Examiner rejected claims 70-84, 86, 87, and 89-102 under 35 U.S.C. § 103(a) as being unpatentable over Wollrath et al. in view of Ruehle et al. Applicants respectfully traverse the rejection of these claims because the Examiner has not established a *prima facie* case of obviousness at least because Wollrath et al. and Ruehle et al., either alone or in combination, do not teach or suggest each and every element of Applicant's invention.

Claim 70 recites a computer-implemented method comprising, among other things, forwarding a first activate request to a first activation entity associated with a first virtual machine, wherein the first group of objects is a first subset of all objects that can be remotely activated, and wherein objects of the first object group are executed only in the first virtual machine.

Claim 70 includes recitations similar to those of claim 85. As explained, claim 85 is distinguishable from Wollrath et al. Accordingly, claim 70 is also distinguishable from Wollrath et al. Moreover, Ruehle et al. fails to cure the deficiencies of Wollrath et al. noted above. Specifically, Ruehle et al. discloses instantiation of JAVA process objects

where instance variable for a JAVA process object are serialized and sent over a JAVA physical socket between client and server. Id. at col. 1, lines 50-54. However, Ruehle et al. does not teach or suggest at least forwarding a first activate request to a first activation entity associated with a first virtual machine, wherein the first group of objects is a first subset of all objects that can be remotely activated, as recited in claim 70.

Furthermore, Wollrath et al. and Ruehle et al., either alone or in combination, do not teach or suggest objects of the first group are executed only in the first virtual machine, as recited in claim 70. As the Examiner admits, "Wollrath does not teach that this includes creating a virtual machine..." Office Action at page 3. Because Wollrath et al. does not even disclose creation of a virtual machine, it necessarily follows that it does not also disclose objects of the first group are executed only in the first virtual machine, as recited in claim 70. Ruehle et al. does not cure the shortcomings of Wollrath et al. because while the reference discloses a JAVA virtual machine 14 upon which a socket 12 runs and the creation of a JAVA virtual machine 72A which is identical to machine 72 to handle requests from a client 71, the reference does not teach or suggest objects of the first group are executed only in the first virtual machine, as recited in claim 70.

Accordingly, Wollrath et al. and Ruehle et al., either alone or in combination, do not teach or suggest at least forwarding a first activate request to a first activation entity associated with a first virtual machine, wherein the first group of objects is a first subset of all objects that can be remotely activated, and wherein objects of the first object group are executed only in the first virtual machine, as recited in claim 70. Therefore, claim 70 is distinguishable from these references, and Applicants respectfully request

that the rejection of the claim under 35 U.S.C. § 103(a) be withdrawn and the claim allowed.

Claims 71-84 depend from claim 70. As explained, claim 70 is distinguishable from Wollrath et al. and Ruehle et al. Accordingly, claims 71-84 are also distinguishable from these references for at least the same reasons in connection with claim 70, and Applicants request the rejection of these claims be withdrawn and the claims allowed.

Claim 91 includes recitations similar to claim 70. As explained, claim 70 is distinguishable from Wollrath et al. and Ruehle et al. Accordingly, claim 90 is also distinguishable from these references for at least the same reasons set forth in claim 70. Moreover, claims 92-102 depend from claim 91, and as explained, claim 91 is distinguishable from Wollrath et al. and Ruehle et al. Accordingly, claims 92-102 are also distinguishable from these references for at least the same reasons as set forth for claim 91, and Applicants respectfully request that the rejection of claims 92-102 under 35 U.S.C. § 103(a) be withdrawn and the claims allowed.

Further regarding claims 77-84, 101, and 102, it appears the Examiner is taking Official Notice that the recitations of these claims are inherent or well known in the art. As explained with respect to claim 88, it is improper for the Examiner to assert that the recitations of a claim is inherent without presenting evidence to support the assertion. In this case, Applicants request that the Examiner provide documentary evidence and/or reasons to support the position of Official Notice to allow Applicants to challenge the assertion in their next communication to the Examiner.

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Conclusion

In view of the foregoing remarks, Applicants request the Examiner's reconsideration and reexamination of the application, and the timely allowance of pending claims 70-102.

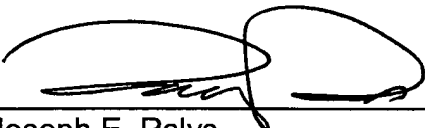
Please grant any extension of time required to enter this response and charge any additional fees to our deposit account 06-0916.

Respectfully submitted,

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